

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SLOAN VALVE COMPANY,	)	
	)	
Plaintiff,	)	Case No. 10-cv-00204
	)	
vs.	)	Judge Amy J. St. Eve
	)	
ZURN INDUSTRIES, INC., and ZURN	)	
INDUSTRIES, LLC,	)	Magistrate Judge Sidney I. Schenkier
	)	
Defendants.	)	
	)	

**DEFENDANTS' MOTION FOR LEAVE TO EXCEED PAGE LIMIT AND TO FILE  
UNDER SEAL DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS *DAUBERT*  
MOTION TO EXCLUDE TESTIMONY OF JULIUS BALLANCO AND SUPPORTING  
EXHIBITS**

Zurn respectfully moves for leave to exceed the page limit for a brief under Local Rule 7.1 in its Memorandum in Support of its *Daubert* Motion To Exclude Testimony of Julius Ballanco. Further, pursuant to N.D. Ill. L.R. 26.2 and in accordance with the Agreed Protective Order entered February 25, 2010 (Dkt. 32), Zurn hereby moves this Honorable Court for leave to file its Memorandum in Support of its *Daubert* Motion To Exclude Testimony of Julius Ballanco and exhibits thereto under seal.

**A. Motion for Leave to Exceed Page Limit**

Sloan's plumbing expert, Julius Ballanco, served two expert reports purporting to establish how the accused Zurn devices infringe the patent in suit. Each report relied on different assumptions and a different set of data. As a result, Ballanco's opinions and methodologies have presented a moving target. Due to Ballanco's shifting and inappropriate opinions, Zurn is forced to address numerous arguments including his: (1) disavowal of his initial expert report and methodology and test data relied upon therein; (2) supplementation of his opening report with

additional data; (3) shifting interpretation of claim terms, which differs from the Court's construction; and (4) improper testimony regarding price erosion.

Because Ballanco's testimony comprises disavowals, modifications, misinterpretations of the Court's claim construction, as well as testimony clearly outside of his alleged expertise, Zurn must separately treat each issue. In addition, the technical nature of the arguments requires additional explanation of the analyses performed to illustrate Ballanco's inadequacies. As a result, the page number of Zurn's Memorandum in Support of its *Daubert* Motion exceeds the fifteen page limit of Local Rule 7.1 by a total of two pages. For this reason, Zurn respectfully requests that the Court grant it immediate relief to exceed the page limit for a brief under Local Rule 7.1 for its Memorandum in Support of its *Daubert* Motion To Exclude Testimony of Julius Ballanco.

**B. Motion for Leave to File Memorandum and Exhibits Thereto Under Seal**

Zurn also seeks leave to file the Memorandum and Exhibits in Support of its *Daubert* Motion To Exclude Testimony of Julius Ballanco under seal. In its brief in support of its *Daubert* Motion, Zurn has made reference to Ballanco's February 25, 2013 deposition transcript, which is designated Highly Confidential under the Agreed Protective Order. Dkt. 32. Because its brief in support of its *Daubert* Motion concerns Highly Confidential information and refers to exhibits containing Highly Confidential information, Zurn requests that this Court grant it leave to file the brief and these exhibits thereto under seal pursuant to L.R. 26.2. Copies of the brief and Ballanco Deposition (attached as Exhibit 1) will be delivered to Chambers and served separately on counsel for Sloan.

Based on the foregoing, Zurn respectfully requests leave of this Court to file its brief in support of its Daubert Motion to Exclude Testimony of Julius Ballanco and exhibits thereto under seal.

June 10, 2013

Respectfully submitted,

/s/ Nicole M. Murray

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**Attorneys for Defendants, Zurn Industries, Inc.  
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## CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, I electronically filed DEFENDANTS' NOTICE OF MOTION FOR LEAVE TO EXCEED PAGE LIMIT AND TO FILE UNDER SEAL DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS *DAUBERT* MOTION TO EXCLUDE PLAINTIFF'S COMPENSATORY DAMAGES EXPERT AND SUPPORTING EXHIBITS with the Clerk of the Court using the CM/ECF system, which will send an electronic copy to the interested parties below and constitutes service under the Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois. I further certify that I served a copy of all proposed under seal documents to the counsel listed below.

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# EXHIBIT 1

FILED WITH CHAMBERS

# EXHIBIT 2

FILED WITH CHAMBERS